

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE)
COMMISSION, ON ITS OWN MOTION,)
SEEKING TO INVESTIGATE WHETHER)
THE ZONES ESTABLISHED IN DOCKET)
NO. C-2516 ARE APPROPRIATE IN)
LIGHT OF NUSF-26 FINDINGS AND)
CONCLUSIONS.)

Application No. C-3554/PI-112

**INITIAL COMMENTS OF
NEBRASKA TECHNOLOGY & TELECOMMUNICATIONS, INC.**

I. INTRODUCTION

On February 28, 2006, the Nebraska Public Service Commission (“Commission”) entered an Order (the “Order”) opening the above-captioned docket to explore several issues relating to reevaluation of the rate zone scheme adopted in Docket C-2516. Nebraska Technology & Telecommunications, Inc. (“NT&T”) appreciates the opportunity to comment on some of the issues raised by the Order.

In summary, it is NT&T’s position that the Commission possesses the authority to create more than three cost-related rate zones. Furthermore, NT&T contends that the novel methodology proposed by the staff is flawed and would effectively eliminate all competition in out-of-town zone areas. NT&T has long maintained that Qwest’s UNE rates are not cost-based and are not “just, reasonable and nondiscriminatory” and respectfully requests that the Commission open a new cost docket to establish Qwest’s actual-cost-based rates.

II. COMMENTS

Specifically, the Order requested comment on three separate issues:

- a. Whether the Commission has the requisite authority to create more than the three zones implemented in C-2516?

- b. Whether the Unifying Method (“UM”) proposed by Commission staff is sound methodology or should be modified and/or changed?
- c. Whether an alternative methodology or methodologies would be preferable to the staff’s proposals?

Each of these will be briefly addressed below.

A. The Commission possesses the authority to create more than three rate zones.

Clearly the Commission possesses the authority to create more than three geographic zones for purposes of establishing rates for unbundled network elements (“UNEs”). The Federal Communication Commission’s (“FCC”) regulations mandate that “[s]tate commissions shall establish different rates for elements in *at least* three defined geographic areas within the state to reflect geographic cost differences.” 47 C.F.R. §51.507(f) (2005)(emphasis added). For states such as Nebraska, the FCC’s regulations further provide that the Commission “must create a *minimum* of three cost-related rate zones.” 47 C.F.R. §51.507(f)(2)(2005)(emphasis added). Thus, the federal regulations establish a floor, not a ceiling, on the number of zones that must be created.

This mandate to create at least three zones was previously recognized by the Commission in Application NO. C-2516/PI-49. Therein, the Commission expressly noted that it “is required by the FCC to deaverage Loop UNE rates into a minimum of three zones. That is, areas with similar cost characteristics are to be grouped into *no less than* three zones, and an average price developed for each zone.” Findings and Conclusions, *In the Matter of the Commission on its own motion, to investigate cost studies to establish Qwest Corporation’s rates for interconnection,*

unbundled network elements, transport and termination, and resale, Application NO. C-2516/PI-49 at ¶79 (Apr. 23, 2002) (emphasis added).

Consequently, it is well established that the Commission has the requisite authority to create more than three cost-related rate zones. In the event the Commission chooses to do so, NT&T would appreciate the opportunity to comment and present evidence on the appropriate number of zones and the particular groupings for each.

B. The UM is flawed and no rationale for increasing loop rates exists.

At the outset, NT&T contends that an insufficient rationale exists for adopting a new methodology and increasing the UNE-L rates, especially where the end result is a 277 percent rate increase for some Zone 3 lines. Although it is not clear from the Order, it appears that the primary motivation for opening this Docket was to “seek to develop rates consistent with the support areas determined in Application No. NUSF-26.” Order at 2. Unfortunately, despite the laudable goal of consistency, the Order fails to make a persuasive case for such a sweeping change in how UNE-L rates are calculated and such an astronomical increase in some of the UNE-L rates.

In addition, it is NT&T’s position that the UM is flawed in several respects. First, the UM does not satisfy the requirements of Section 252(d)(1) of the Act that require the Commission to determine just and reasonable rates for interconnection. 47 U.S.C. § 252(d)(1); *see also* 47 C.F.R. §51.503(a). NT&T contends that the rates resulting from the UM, in particular the Zone 2 and Zone 3 out-of-town rates, are neither just nor reasonable and result in a significant windfall for Qwest while effectively snuffing out all meaningful competition in these zones. It is important to note that the UM and the deleterious effect it would have on

competition and service must be considered without regard to any Nebraska Universal Service Fund (“NUSF”) support that may be received by the CLEC. This is because the federal Telecommunications Act requires the Commission to establish rates that are just, reasonable and based on the cost of providing the interconnection or network element, 47 U.S.C. §252(d)(1), a calculation that does not factor in universal support. Equally important is the fact that NUSF support is also under reexamination by the Commission and reductions in NUSF support are currently being discussed. *In the Matter of the Commission on its Own Motion, to Make Adjustments to the Universal Service Fund Mechanism Established in NUSF-26*, Application No. NUSF-50, Progression Order No. 1. Thus, any benefit that could be gained in this proceeding could quickly disappear in NUSF-50.

Second, the wide disparity in rates generated by the UM will create perverse incentives for CLECs. Under the current rate structure, the UNE-L rates in the three zones range from \$12.14 to \$62.49. Under the proposed UM, the UNE-L rates would range from \$9.33 to \$172.95. A rational CLEC would conclude that it is not economically feasible to offer service to customers in any out-of-town zones, thereby depriving these customers of the benefits of competition. This is especially true for out-of-town business lines that are no longer eligible for NUSF support as a result of the November 3, 2004, Findings and Conclusions in Application No. NUSF-26. The net effect is a disincentive to provide service to out-of-town businesses in rural Nebraska.. This is hardly the intended result of the Act.

Consequently, it is NT&T’s position that the UM is seriously flawed and must be rejected. .

C. This proceeding should be consolidated with those proceedings exploring potential modifications to NUSF support calculations.

As noted above, there is a significant degree of interrelatedness between the issues raised by this Docket and the issues raised by the NUSF modifications under consideration in Application No. NUSF-50, Progression Order No. 1. Rather than continue to consider these issues in separate dockets, NT&T urges the Commission to either: (1) consolidate this proceeding with Application NUSF-50 and any other open dockets contemplating changes to NUSF; or (2) open a new docket so that all of these issues can be considered together.

D. NT&T's preferred alternative is the opening of a new cost docket to establish Qwest's UNE rates based upon the TELRIC-based methodology adopted in C-2516.

In the Order, the Commission requested comment on preferred alternatives to the UM proposed by the staff. NT&T has long maintained that Qwest's UNE rates are not cost-based and are not "just, reasonable and nondiscriminatory." 47 U.S.C. §251(d)(3). Rather than adopting an entirely new methodology, NT&T would support the opening of a new cost docket to establish Qwest's actual cost-based rates utilizing the TELRIC pricing principles adopted in Application C-2516.

E. The Commission's first step should be to explore the issue of whether more than 3 zones should be created and, if so, how.

NT&T believes that adopting the UM and its in-town/out-of-town dichotomy in this proceeding puts the proverbial cart before the horse. The first step should be to determine whether it is appropriate for the Commission to establish more than three cost-related rate zones. Only after that question is answered in the affirmative should the Commission start down the

road of deciding what those zones should be and whether the methodology adopted in C-2516 should be scuttled and replaced.

III. CONCLUSION

The Nebraska Legislature has declared “that it is the policy of the state to : . . [p]romote fair competition in all Nebraska telecommunications markets in a manner consistent with the federal act.” NEB.REV.STAT. §86-801 (emphasis added). While consumers in Omaha have benefitted from the Commission’s actions in promoting fair competition, most consumers residing in Qwest’s other Nebraska exchanges have not. When considering the issues raised in this Docket, NT&T respectfully requests that the Commission adopt those policies that best facilitate local telecommunications competition in Nebraska.

DATE: May 3, 2006

NEBRASKA TECHNOLOGY & TELE-
COMMUNICATIONS, INC. a Nebraska
corporation,

By: REMBOLT LUDTKE LLP
1201 Lincoln Mall, Suite 102
Lincoln, NE 68508
(402) 475-5100

By: _____
Mark A. Fahleson (#19807)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused a one original, five true and correct paper copies and one electronic copy in MS Word format of the foregoing Comments of Nebraska Technology & Telecommunications, Inc. to be filed with the Nebraska Public Service Commission, and one true and correct copy to be sent by ordinary United States mail, first class postage prepaid, on this 3rd day of May, 2006, addressed as shown below, to the following:

Paul M. Schudel
James Overcash
Woods & Aitken LLP
301 S. 13th St., Ste. 500
Lincoln, NE 68508

Robert G. Lanphier
Qwest Corporation
1314 Douglas-on-the-Mall
15th Floor
Omaha, NE 68102

Deonne Bruning
Deonne Bruning, P.C., L.L.O.
2901 Bonacum Drive
Lincoln, NE 68502

Loel P. Brooks
Brooks, Pansing Brooks, PC, LLO
1248 "O" Street, Suite 984
Lincoln, NE 68508-1424

Mark A. Fahleson